



Division of procurement
Services

REQUEST FOR
PROPOSAL

Solicitation Number
Date Issued
Procurement Officer

RFP-33876-7/03/2008-CGC
June 5, 2008
Clarissa G. Clark, CPPB *Coe*
Phone (803) 898-3510
E-Mail Address clarkcg@dhec.sc.gov
Page 1 of 38

DESCRIPTION: Services to perform Agreed-Upon Procedures Engagements for Palmetto Health and Regional HealthPlus, LLC. for the Certification of Public Advantage (COPA) Program.

USING GOVERNMENT AGENCY: SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

The Term "Offer" Means Your "Bid" or "Proposal".

SUBMIT OFFER BY: (Opening Date/Time): **July 3, 2008 2:30 pm** See "Deadline for Submission of Offer" provision

NUMBER OF COPIES TO BE SUBMITTED: **One (1) original and four (4) copies marked "copy"**

QUESTIONS MUST BE RECEIVED BY: **June 23, 2008 2:30 pm** See "Questions From Offerors" provision

Offers must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS:	PHYSICAL ADDRESS:
SC DHEC Division of Procurement Services Bureau of Business Management 2600 Bull Street Columbia, SC 29201	SC DHEC Division of Procurement Services Bureau of Business Management 2600 Bull Street, Room 1200 – Aycock Bldg. Columbia, SC 29201

See "Submitting Your Offer" provision

CONFERENCE TYPE: None Scheduled DATE & TIME: As appropriate, see "Conferences-Pre-Bid/Proposal" & "Site Visit" provisions	LOCATION: Not Applicable
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AWARD & AMENDMENTS	Award will be posted at the Physical Address stated above on July 14, 2008 . The award, this solicitation, and any amendments will be posted at the following web address: http://www.scdhec.net/procurement
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You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of sixty (60) calendar days after the Opening Date.

NAME OF OFFEROR (Full legal name of business submitting the offer)		OFFEROR'S TYPE OF ENTITY: (Check one) <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Tax -exempt corporate entity <input type="checkbox"/> Government entity (federal, state, or local) <input type="checkbox"/> Other (See "Signing Your Offer" provision.)
AUTHORIZED SIGNATURE (Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above.)		
TITLE (Business title of person signing above)		
PRINTED NAME (Printed name of person signing above)	DATE SIGNED	

Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the offeror above. An offer may be submitted by only one legal entity. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

STATE OF INCORPORATION (If offeror is a corporation, identify the state of Incorporation.)

TAXPAYER IDENTIFICATION NO.

STATE VENDOR NO.

(See "Taxpayer Identification Number" provision)

Solicitation Outline

I.	SCOPE OF SOLICITATION Background	Pages 2 - 3
II.	INSTRUCTIONS TO OFFERORS Submission of Questions Contents of Offer (RFP)	Page 4
III.	NATURE OF SERVICES REQUIRED Objectives Meetings Reporting Requirements Contractual Arrangements Report Review, Timing, Required Deliverables, and Number of Copies	Pages 5 - 8
IV.	INFORMATION FOR OFFEROR STO SUBMIT Title Page Table of Contents Letter of Transmittal Profile of Offeror Mandatory Criteria Offeror's Approach Compensation Additional Data	Pages 8 - 11
V.	SUMMARY OF OFFEROR'S QUALIFICATIONS	Page 11
VI.	EVALUATIONS OF PROPOSALS Technical Factors Cost Factor	Page 12
VII.	ATTACHMENTS	Pages 13 - 40

I. SCOPE OF SOLICITATION

It is the intent of the South Carolina Department of Health and Environmental Control (DHEC) to solicit by Request for Proposals (RFP) for services to perform Agreed-Upon Procedures (AUP) Engagements for Palmetto Health and Regional HealthPlus, LLC for the Certification of Public Advantage (COPA) Program, in accordance with all requirements as stated herein.

Award will be made to one offeror for both Agreed-Upon Procedures Engagements.

MAXIMUM CONTRACT PERIOD: Five Years from Date of the Purchase Order.

Any resulting contract will begin on the date specified in the notice of award. This is a one year contract with four mutual agreed upon one-year options to renew.

Initial Contract Period: One Year from Date of the Purchase Order

A resulting contract will automatically extend on each anniversary date unless either party elects not to extend the contract. Extensions may be less than, but will not exceed four (4) additional one (1) year periods. If either the contractor or DHEC elects not to extend on the anniversary date, the contractor must notify the State Auditor's Office of its intention in writing ninety (90) days prior to the anniversary date.

BACKGROUND

In May of 1994, the South Carolina legislature passed the Health Care Cooperation Act to permit and encourage cooperative agreements between hospitals, health care purchasers, and other health care providers. The General Assembly found that the cost of health care was significantly increasing and that cooperation among hospitals and other health care purchasers and providers could foster improvements in the quality of health care, access to health care, and the cooperation could enhance the likelihood that rural hospitals could remain open. The General Assembly also found that federal and state antitrust laws discouraged cooperation, when cooperation should be encouraged, and consequently determined that the benefits of the cooperative agreement outweigh the disadvantages caused by their potential adverse effects on competition.

Regulations were promulgated and became effective on June 23, 1995. The regulations (Regulation 61-31, Health Care Cooperative Agreements) set up an application process, which includes the submission of an application by the applicants, a provision for public hearings and specific criteria by which to judge the merits of the applications. DHEC is required to render a decision sixty days from receipt of a complete application or sixty days from the date of the public hearing, if one is requested. DHEC is required to provide the South Carolina Attorney General a copy of the application. The Attorney General may advise DHEC whether to approve or deny the application. If approved, DHEC is required to monitor the approved agreement for as long as the agreement is in effect. If DHEC determines that the community benefits that were proposed in the application are not realized, DHEC may rescind its approval.

As a general rule, if a state determines to regulate an industry and to closely monitor the approvals, the federal and state antitrust provisions have not been applied. This is called the "State Action Doctrine". However, the program does not protect anyone from price-fixing, predatory pricing, or illegal tying arrangements.

DHEC reviewed its first application under the Certification of Public Advantage (COPA) Program. The application involved the merger of Richland Memorial Hospital and Baptist Healthcare System of South Carolina. A public hearing was held on March 10, 1997, and a decision to approve the merger was rendered by DHEC on May 8, 1997. The BR Health System later changed its name to the Palmetto Health Alliance (PHA). On January 25, 2007 PHA changed its name to Palmetto Health (PH).

The Palmetto Health (PH) celebrated its tenth anniversary on February 8, 2008. Throughout this time, PH has operated in accordance with the Certificate of Public Advantage (COPA) granted by the South Carolina Department of Health and Environmental Control (Department) on or around May 8, 1997. Many of the conditions set forth in the COPA were targeted for the first five (5) years of operations and have either been satisfied or are no longer applicable. Per the Department letter dated November 18, 2003, thirteen (13) conditions are now applicable to the review of the PH COPA (see Attachment I). These thirteen (13) conditions remain in effect for the third five (5) year period.

DHEC reviewed its second application under the COPA Program in 2007. The application involved the state Certification as being to the public advantage for Regional HealthPlus, LLC (RHP), a physician-hospital organization which currently serves patients in the Spartanburg area of South Carolina since 1995, to be able to continue its current provision of healthcare services and patient services without challenge under antitrust law. RHP is owned by participating physicians and Spartanburg Regional Healthcare System, a public hospital corporation and political subdivision of the State of South Carolina.

A decision to approve the certification was rendered by DHEC on November 9, 2007.

The entire applications, attachments, and public comments used by PH and RHP, and additional information submitted to DHEC are available for inspection at 1777 St. Julian Place, Suite 201, Columbia, South Carolina.

II. INSTRUCTIONS TO OFFERORS

GENERAL INFORMATION

1. One (1) original and four (4) copies of your offer are required.
2. Due to the possibility of negotiation with an offeror submitting a proposal which appears to be eligible for contract award pursuant to the evaluation criteria set forth in the Request for Proposal (RFP), prices will not be divulged at time of opening.
3. This solicitation does not commit the State of South Carolina to award a contract, to pay any cost incurred in the preparation of a proposal, or to procure or contract for the services as described herein. The State reserves the right to accept or reject any or all proposals received as result of this request, or to cancel in part or in its entirety if it is in the best interest of the State to do so.
4. Offers should be complete and carefully worded and should convey all of the information requested.
5. Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
6. Each copy of your offer should be bound in a single volume where practical. All documentation submitted with your offer should be bound in that single volume.
7. If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

SUBMISSION OF QUESTIONS – Deadline June 23 2008, 2:30 PM EST

All questions, request for information or requests for clarification regarding this **Agreed Upon Procedures (AUP) Engagements of the Certification of Public Advantage (COPA) Program** must be submitted as indicated below. Questions, request for information or requests for clarification must be submitted in writing either by mail or faxed and received no later than **2:30 pm EST on June 23, 2008**. The State of South Carolina and SC DHEC are not under any obligation to respond to further questions, but reserve the right to do so after this deadline. Any follow-up questions must relate only to the amendment issued in the responses from SC DHEC. A response in the form of a written amendment to the Request for Proposal will be mailed to all bidders and posted on the DHEC's Division of Procurement Services website (www.scdhec.net/procurement).

When possible, please submit all questions by email. Address the subject line of your email as follows: **QUESTIONS: Agreed Upon Procedures (AUP) Engagements**

Mark envelopes on questions mailed: **QUESTIONS: RFP-33876-07/03/2008-CGC**
Title: **Agreed Upon Procedures (AUP) Engagements**
Attn.: **Clarissa G. Clark, CPPB**

QUESTIONS MAY BE E-MAILED TO:
shealyj@dhec.sc.gov

OR

FAXED TO:
803-898-3505

ALL MAIL IS PICKED UP FROM THE US POSTAL SERVICE DAILY BY 10:30 A.M (EXCLUDING WEEK-ENDS AND HOLIDAYS).

REQUEST FOR PROPOSAL'S SUBMITTED VIA THE DIVISION OF PROCUREMENT SERVICES, SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL'S FASCIMILE MACHINE ARE UNACCEPTABLE.

III. NATURE OF SERVICES REQUIRED

The Contractor will conduct an agreed upon procedures (AUP) engagement of the Certification of Public Advantage (COPA) Program for the following:

Palmetto Health – Columbia area of South Carolina
Regional HealthPlus, LLC - Spartanburg area of South Carolina

The same requirements will apply to each AUP Engagement.

The engagement will focus on compliance of Section 312 of Regulation 61-31, Health Care Cooperative Agreements. The agreed upon procedures engagement should include:

1. Within thirty days following the award of the contract, begin reviewing the information currently on file with DHEC and offer DHEC advice on additional information that might be needed from the applicant in order to conduct the AUP.
2. Compliance of all conditions placed on DHEC's approval of the Palmetto Health and Regional HealthPlus, LLC, as updated from the original conditions as set forth in a letter to the Palmetto Health Alliance dated November 18, 2003 and November 9, 2007 to Region HealthPlus, LLC (see Attachment I for excerpts).
3. Assist DHEC in advising Palmetto Health and Regional HealthPlus, LLC on the format and content of their annual report.
4. Assist DHEC in collecting additional information that may be needed, but not included in Palmetto Health's and Regional HealthPlus' annual reports in order to determine compliance.
5. If necessary, agree to amend the contract to include other facilities should the Palmetto Health expand to include other facilities.
6. Agree to all confidentiality information such as, but not limited to, confidential hospital information you might be privileged to, patient information, or legal advice provided by DHEC.

ASSISTANCE BY DHEC

DHEC will assign a project manager upon final award of the contract. All questions and reports will be directed to the project manager.

OBJECTIVES

The objectives of this agreed-upon procedures engagement are to determine whether the Palmetto Health and the Regional HealthPlus, LLC are complying with conditions pursuant to Section 312 of Regulation 61-31, Health Care Cooperative Agreements.

The engagement must be performed in accordance with the most current version of the *Government Auditing Standards (GAS)* promulgated by the Comptroller General of the United States and SSAE No. 10. The engagement must include procedures to ensure compliance with all relevant state laws, rules and regulations. To achieve the engagement objectives, the successful firm will include the following in the development of engagement procedures:

1. Must have knowledge and experience in health care financing and accounting.
 - a. Must be familiar with health care terminology such as disproportionate share and contractual adjustments.
 - b. Must be familiar with health care rules under generally accepted accounting principles.
2. Review Section 312 of Regulation 61-31, Health Care Cooperative Agreements for compliance with all applicable conditions.

MEETINGS

1. A planning meeting will be held within ten days of the final contract award with DHEC representatives to discuss overall engagement strategy and procedures, and submission of the vendor-sampling plan and work program steps for DHEC approval.
2. At a minimum, meet with DHEC on the last workday of each month to evaluate the progress, discuss issues, and resolve problems. Additional meetings may occur as needed.

REPORTING REQUIREMENTS

1. Contractor will provide monthly written progress reports detailing the activity on the engagement to the Project Manager in the meetings held the last workday of each month. The Contractor should also be available by telephone to provide updates as required or needed.
2. The Contractor must document the engagement results in a written report that conforms to the reporting requirements of *GAS*. The Contractor must adhere to the *GAS* reporting standards for agreed upon procedures engagement.
3. If during the engagement or in connection with the engagement, the Contractor becomes aware of abuse or illegal acts or indications of such acts that could affect DHEC, the circumstances must promptly be reported to the Project Manager.
4. A final report is to be submitted to DHEC no later than ninety days prior to the end of each calendar year.

CONTRACTUAL ARRANGEMENTS

A statement of award will be issued by the State Auditor's Office/DHEC to the successful offeror. The statement of award will specify the maximum fee to be paid for performance of the proposed engagements as set forth in the successful proposal.

Any expansion of services resulting in an increase in the maximum fee must have the prior written approval of DHEC and the State Auditor's Office.

The proposal must include a statement that the AUP engagement is being performed on behalf of DHEC and DHEC is the client. DHEC will be responsible for payment of the engagement fee. However, all invoices must be approved by the State Auditor's Office prior to payment.

DHEC is an equal opportunity employer/contractor. If needed by a certified minority contractor or subcontractor, certification for either a letter of credit or an income tax credit statement will be made available upon request.

Progress billings from itemized invoices will be accepted by DHEC on a monthly basis for deliverables made and services rendered. The invoices must be first sent to State Auditor's Office to: Director of State Audits, 1401 Main Street, Suite 1200, Columbia, SC, 29201. The Director of State Audits will forward the approved invoice to DHEC. Documentation for costs billed must accompany each invoice. DHEC will retain twenty-five percent (25%) of each monthly progress billing invoice amount until the final report is received, reviewed, and accepted. The retained fee will be shown on the invoice as a separate line item on each invoices submitted for payment.

REPORT REVIEW, TIMING, REQUIRED DELIVERABLES, AND NUMBER OF COPIES

At a minimum, the following progress reports, agreed upon procedure (AUP) reports, and other related memoranda and documentation are required during the course of this engagement. All text documents will be submitted in Microsoft Word and all spreadsheets will be submitted in Microsoft Excel.

1. Written Work Program - The Contractor's work program must provide a description of the approach and procedures to accomplish the objectives as outlined in this document.
2. Written Progress Reports - Each month the Contractor must provide a narrative summary on the status of the engagement. Each progress report must, at a minimum, contain the hours of effort expended by partners, managers, supervisors, seniors, staff, specialists, and all other personnel. The report must also include: total costs incurred to date; the estimated percentage of work completed; any tentative audit findings; and any proposed revisions to the schedule.
3. Oral Progress Reports - Progress meetings will be held with DHEC management on an as needed basis. However, interim telephone conversations are encouraged.
4. Draft Reports - The report must be prepared in accordance with GAS. Before issuing the final report, the Contractor must submit, for approval, a draft report. At a minimum, the report will contain the agreed-upon procedures performed, any exceptions noted and recommendations for correction or improvement, and the written response to any exceptions. The draft report is to be delivered as soon as it is available. The draft report is to be sent to DHEC to be reviewed by the project manager and/or other DHEC representatives. The partner responsible for report quality must submit with the draft report a signed statement certifying that in the responsible partner's professional opinion, the preliminary draft is a completed document and ready to be issued. The project manager will contact the engagement partner once the review has been completed to discuss any report issues. Once any issues have been resolved the project manager will contact the engagement partner to schedule an exit conference with the project management team.
5. Revise the draft report as necessary, based on exit conference discussion.
6. Final Report - The Final Report must incorporate any additional comments by DHEC with which the Contractor concurs. Issue a final report to include the written responses to any exceptions.

7. Exit Conference – The Contractor will present the result of the engagement to the DHEC Commissioner or to the DHEC Executive Management Team (EMT), if determined necessary by the project manager.
8. Working Papers – Working papers must be prepared in accordance with acceptable professional standards as described in *GAS*. Working papers will be retained by the Contractor for three years or until advised otherwise by DHEC in writing. The working papers must be made available at the Contractor's site, without charge for examination, to representatives of DHEC or the State Auditor's Office.
9. Format and Number of Reports Required – All reports must be certified in writing by the principal auditor. Reports shall be submitted in accordance with the following:

<u>Item</u>	<u>Quantity</u>
a. Work Program	2 hard copies 1 diskette
b. Progress Reports	2 hard copies No diskette
c. Draft Report(s)	2 hard copies 1 diskette
d. Final Report	5 bound hard copies 1 unbound copy 1 diskette

RIGHT TO REJECT

DHEC reserves the right to reject any and all proposals submitted and to request additional information from all offeror's. Any award made will be made to the firm, which in the opinion of the evaluators is best qualified.

IV. INFORMATION TO OFFERORS TO SUBMIT

To be considered for award, all proposals must include, as a minimum, the following information. Offerors should restate each of the items below and provide their response to that item immediately thereafter. **All information should be presented in the order listed. Offerors should restate each item below and provide their response to that item immediately thereafter.**

Submittal Letter: Include a cover letter containing a statement that the offeror is willing to perform the services and enter into a contract with the State. The cover letter must be signed by a person having the authority to commit the offeror to a contract.

To simplify the review process and obtain the maximum degree of comparison, we require that proposals be organized in a manner specified by the RFP. The following outline includes all the information called for in the RFP. Where the words "state" or "affirm" appear, the offeror is required to literally make a statement or affirmation.

TITLE PAGE

Show the RFP subject, the name of the offeror's firm, local address, telephone number, fax number, name of the contact person, email address of contact person, and the date.

TABLE OF CONTENTS

Include a clear identification of the material by section and by page number.

LETTER OF TRANSMITTAL

Limit to one or two pages.

1. Briefly state the offeror's understanding of the work to be done and make a positive commitment to perform the work within the time period.
2. State that:
 - a. No conflict of interest exists in reviewing the records of the Palmetto Health and Regional HealthPlus, LLC.
 - b. The AUP engagement is being performed on behalf of DHEC.
 - c. DHEC is your client.
 - d. DHEC will be responsible for payment of the audit fee.
 - e. Invoices will be sent to the State Auditor's Office for approval prior to being processed by DHEC.
3. State a separate **all-inclusive fee** for which the AUP engagement will be done. State that this **all-inclusive fee** includes all out of pocket costs.
4. State the names of the persons who will be authorized to make representations for the offeror, their title, addresses, telephone numbers, fax numbers, and email addresses.
5. State that the person signing the letter will be authorized to bind the offeror.
7. State the name of the partner and staff members assigned to this engagement and also, the name of the partner assigned the responsibility of performing the concurring partner quality review of the report and working papers. Give their telephone numbers, fax numbers, and email addresses for use by DHEC.
8. State that the engagement partner(s), manager(s), and supervisory staff assigned to this engagement will be furnished with copies of this RFP and their attention will be specifically directed to the following captions in Section III. Nature of Services Required:
 - Objectives
 - Meetings
 - Reporting Requirements
 - Contractual Arrangements
 - Period of Performance
 - Report Review, Timing, Required Deliverables and Number of Copies
9. State that the partner responsible for performing the concurring partner quality review of the report will submit with the preliminary draft a signed statement certifying that in the concurring partner's professional opinion, the preliminary draft is a completed document and ready to be issued.

PROFILE OF OFFEROR

1. State whether the firm is local, regional, national, or international.
2. State the location of the office from which the work is to be done and the number of partners, managers, supervisors, seniors, and other professional staff employed at that office.
3. Describe the range of activities performed by the local office such as auditing, accounting, tax service, or management services.

MANDATORY CRITERIA

1. Affirm that the offeror is a properly licensed certified public accountant.
2. Affirm that the offeror is either currently licensed in South Carolina or is a non-resident properly registered under Title 40, Chapter 1, Article 250 of the 1976 South Carolina Code of Laws, as amended, and the associated Regulation, Chapter 1, Article 10. An affirmation that a non-resident offeror will become properly registered prior to commencing work will be acceptable.
3. Affirm that the offeror meets the independence standards of the Government Auditing Standards issued by the Comptroller General of the United States. In addition, Attachment IV "Independence Statement" should be completed and attached to the proposal.
4. Affirm that the offeror meets the confidentiality requirements outlined in Attachment V. Attachment V should be completed and attached to the proposal.
5. Affirm that the engagement partner, manager, and supervisor have a minimum of five years auditing experience.
6. Affirm that the offeror does not discriminate in employment of persons upon the basis of race, color, creed, national origin, sex, age, or physical handicap.
7. Certify that, in accordance with Sections 44-107-10 through 44-107-90 of the 1976 South Carolina Code of Laws, as amended, you will provide a drug-free workplace during the term of this contract.
8. Provide a copy of the offeror's latest quality control review.

OFFEROR'S APPROACH

Submit a work plan to accomplish the objectives and nature of services defined in Section III. Nature of Services Required of this RFP.

The work plan should include time estimates for each significant segment of the work and the staff level to be assigned. Where possible, individual staff members should be named outlining their duties. The planned use of specialists should be specified.

1. Agreed-Upon Procedures:
 - a. State that the AUP will be conducted in accordance with the procedures set forth herein.

- b. State that the primary purpose of the engagement is to apply certain agreed-upon procedures.
2. State that if conditions are discovered which lead to the belief that material errors, defalcation, or other irregularities may exist, or if any other circumstances are encountered that require extended services, the auditor will promptly advise DHEC. Finally, state that no extended services will be performed unless they are authorized in writing by DHEC and the State Auditor's Office. State that any additional charges must have prior of the State Auditor's Office.
3. State that all conditions and requirements contained in the RFP will be strictly observed.

COMPENSATION: (Information to be provided for Palmetto Health and Regional HealthPlus, LLC) State the total hours and hourly rate required by staff classification and the resulting **all-inclusive annual fee for each of the five years of the contract**, including out of pocket costs, for which the requested work will be **performed**. The offeror's **all-inclusive annual fee** must include a detailed cost breakdown for each phase required to complete the contract as outlined in the Nature of Services Required. The engagement fee must be stated in the sequence in which the offeror will bill DHEC and the invoice must show the relationship between the specific phase and deliverable of the contract. For services based on an hourly rate, offeror must specify the qualifications and experience of the personnel who will be assigned to these service activities.

ADDITIONAL DATA

Since the preceding sections are to contain only data that is specifically requested, any additional information considered essential to the proposal should be included in this section. The offeror's general information publications, such as directories or client lists, should not be included. If there is not additional information presented, state, "There is no additional information we wish to present".

V. SUMMARY OF OFFEROR'S QUALIFICATIONS

1. State the identity of the engagement management staff (i.e., partner(s), manager(s), supervisor(s)) who will work on the engagement, including staff from other than the local office. Resumes including relevant experience and continuing education received during the past 24 months for each management member of the engagement to be assigned to the engagement should be included. (The resumes may be included as an appendix).
2. Describe the recent local and regional office auditing experience (both in-progress and completed) for the previous 24 months similar to the type of audit requested. The list should include type of engagements and entity, official contract period, number of staff committed and total dollar value. Give the names and telephone numbers of client officials responsible for three of the audits listed.
3. State that your firm is aware of the revised GAO Yellow Book requirements concerning continuing education and peer review and that you will be in compliance with them during the term of this contract.
4. Affirm that your firm is familiar with health care terminology such as disproportionate share and contractual adjustment.
5. Affirm that your firm is familiar with health care rules under generally accepted accounting principles.

VI. EVALUATIONS OF PROPOSALS

A qualified panel will evaluate the following award criteria, listed in order of importance. The following factors will be considered during the evaluation.

TECHNICAL FACTORS

1. Responsiveness of the proposal in clearly stating an understanding of the work to be performed, including making all required statements and affirmations.

Evaluators will consider:

Appropriateness and adequacy of proposed procedures.

Necessity of procedures.

Reasonableness of time estimates.

Appropriateness of assigned staff levels.

Timeliness of projected completion.

4. Technical experience of the firm.
5. Qualifications of the organization and staff, including certifications and recent pertinent continuing education.
6. Size and structure of the firm.
7. Prior experience with the firm with emphasis on report and work paper quality and track record of meeting delivery dates.

COST FACTOR

Although cost is a significant factor, it will not be the dominant factor. Cost will be given more importance when all other evaluation criteria are relatively equal. Our general approach is to first identify all qualified, responsive offerors and then to award the audit to the lowest offeror in that group.

If there is reason to believe that an unreasonably low proposal has been made, it will be rejected. One method of measuring reasonableness is to divide the proposed cost by a reasonable average hourly rate to show hours of effort that might be expected.

Any proposal, which does not include all the required statements and affirmations called for in Section IV. Evaluations of Proposals will automatically be rejected as not being responsive.

VII. Attachments To Solicitation

Attachment I	Excerpts from modification letter dated November 18, 2003 to PH AND Excerpts from approval letter dated November 9, 2007 to RHP	Pages 14 - 17
Attachment II	Section 312 of <u>Regulation 61-31, Health Care Cooperative Agreements</u>	Pages 18 - 29
Attachment III	Proposal Evaluation Worksheets Palemtto Health Regional HealthPlus, LLC	Pages 30 - 33
Attachment IV	Independence Statement	Page 34
Attachment V	Confidentiality Statement	Page 35
Attachment VI	DHEC Confidentiality Policy	Pages 36 - 37
Attachment VII	Health Insurance Portability and Accountability Act of 1996 (HIPAA) Standards for Privacy of Individually Identifiable Health Information	Pages 37 - 40

ATTACHMENT I

Excerpts from modification letter dated November 18, 2003 to PH COPA

The proposed modifications to the COPA are as follows:

1. That the Palmetto Health Alliance (the System) will provide a full report to the Department every other year beginning FY 2003, which will include, at a minimum, responses to the questions in Regulation 61-31, Health Care Cooperative Agreements, Section 502 (B); the previous fiscal year's independent audited financial statements; and information which will enable the Department to evaluate each of the conditions listed below. In years when a full report is not required, the System will provide the Department an abbreviated report which will include, at a minimum, an annual audited financial statement plus a description of the programs and services the System provides through its Community Outreach Programs as described in Condition 2. All reports, full and abbreviated, may require additional information the Department feels is necessary to adequately evaluate the compliance of the Certificate of Public Advantage. These annual reports are due to the Department no later than 120 days after the end of each fiscal year after the System's Joint Operating Agreement is consummated.

In addition, the System will provide a revised three (3) year forecasted financial statement, which may be based upon its most recently Board approved budget and Board accepted audited financial report. The System will also make available to the Department all of its managed care contracts for inspection, if necessary, which will be considered proprietary and not subject to disclosure.

2. That the System will provide 10% of its "excess revenues over expenses" to fund public health initiatives and community outreach programs, and the System will provide no less than seventeen million dollars to be allocated over the first seven years of the System's existence. As of September 30, 2002, the end of the fifth fiscal year of the COPA, the System provided \$12,143,200 to fund public health initiatives and community outreach programs. In year six the System will provide \$2,428,000 or ten percent of year six's excess revenues over expenses, whichever is greater, to fund public health initiatives and community outreach programs. In year seven the System will provide \$2,429,000 or ten percent of year seven's excess of revenue over expenses, whichever is greater, to fund public health initiatives and community outreach programs. After year seven, the System will continue to provide ten percent of its excess revenue over expenses to fund such programming. Efforts funded with this money, as a community benefit, will be evaluated each year as a part of the information required in Condition Number 1. The evaluation will be based on the benefits/changes/accomplishments that occur because of the activities/services provided by the programs and for which the program is held accountable. The evaluation will consider whether these programs are reaching populations that might otherwise not receive these services without the Certificate of Public Advantage.

In addition, the Department will re-evaluate the terms and conditions of the 10% public health commitment and other community benefits in the aggregate should "revenue and gains in excess of expenses and losses" as a percent of gross revenue escalate or decline (1) to a point where the System's commitment to public health and other community benefits becomes unbalanced as it relates to the System's profitability or (2) to a point where there is little or no commitment to public health or other community benefits.

3. That as a part of the information required in Condition Number 1, the System will report on the nature, source and amount of capital expenditures avoided during the preceding fiscal year. In addition, the System will report major operational savings that can be documented. Costs used to document the above savings must be merger specific, that is, savings that occurred because of the merger and not savings that would have been realized even if the merger had not occurred.

4. The System will report its prospective plans for changes of clinical services between the Sponsoring Organizations' facilities prior to making such changes. That the System, prior to changing, will receive approval from the Department of the change. The changes required to be reported are any consolidations, mergers, deletions, or other change or alteration of clinical services that may significantly affect patients' access to care; or medical, graduate medical, and allied health education program's access to the clinical service.
5. That the System will provide access to competing licensed facilities for those services not offered by such facility in the core service area upon non-discriminatory terms and conditions to any competing licensed facility that requests such access. For services not offered by competing licensed facilities in the core service area, the System will give them terms and conditions equal to the lowest of the amount which would be received from patients insured by either Premier PPO, Cigna or Aetna. That the System will continue this access for which it is the sole provider until such time as a competing licensed facility offers the service, and will terminate only in the event that South Carolina repeals its Certificate of Need laws or that such laws otherwise cease to be applicable. Additionally, the System must make available to the Department, upon request, names of any facilities, to include terms and conditions, to which services have been offered.
6. That the System will continue a relationship substantially similar to the relationship set forth in the affiliation agreement between Richland Memorial Hospital and the University of South Carolina School of Medicine and continue to support medical education. If a clinical service is determined to be located at only one Sponsoring Organization's facility, (as provided for in Condition Number 4 above) that medical, graduate medical, and allied health education programs will have access to that clinical service at the facility in which the service is to be located, to the extent that is necessary to complete the education and training as required by the program.
7. That should the System change controlling interest by purchase, lease, assignment, management contract, transfer or comparable arrangement that the new operating entity as a condition of the change will adhere to all the conditions of this approval and all representations put forth in the Certificate of Public Advantage application and subsequent submissions.
8. That as part of the information required in Condition Number 1, "generally accepted accounting principles" consistently applied, but excluding extraordinary revenue and expenses, losses on extinguishments of debt and the impact of any mark to market adjustments on derivative instruments, will be used to calculate net of revenues over expenses in the annual report for determining the 10% public health commitment and that such financial statements will be certified by an independent auditor. However, should any of these other items result in cash gains or losses; they may be included in net revenues over expenses.
9. That neither the System, nor any of their affiliates, may enter into a contract that by its terms precludes third party payers from contracting with other hospitals in the core service area identified by the Sponsoring Organizations. This does not prevent third party payers from unilaterally choosing not to contract with a hospital that is competitive.

However, it must be the decision of the payer and not be required as a condition of a contract with the System or its affiliate. This does not include exclusive contracts with third party payers that may be in effect on this date or their renewals as provided for in the existing contract.

In addition, the System will negotiate with managed care payers in good faith and in a fair and equitable manner. This does not require the System to contract with every payer regardless of terms, or that contracted prices must be the same for all payers. The Department will as a part of its ongoing monitoring process investigate consistent complaints from employers and managed care payers to ensure compliance with this condition and will take appropriate regulatory action when necessary.

10. Except to the extent required by vendors, suppliers or group purchasing organizations (GPOs), that neither the System, nor their affiliates, shall condition any contracts with suppliers, vendors, or group purchasing organizations that preclude or limit such suppliers, vendors, or GPOs to contract with other providers in the core service area identified by the Sponsoring Organizations.
11. That the Department may amend these conditions to include, but not limited to, lowering prices should unexpected events lead to abnormally high margins from operations.
12. That the System will adhere to the commitments it has outlined in its "Summary of System Commitments and Proposed DHEC Monitoring" in its application and all other representations made in the Certificate of Public Advantage application and all of its subsequent submissions, to the extent that they are consistent with the conditions of this approval, and that may not be specially described in these conditions.
13. That the System will pay to the Department an annual monitoring fee to cover the actual cost of audits and monitoring. This fee will be used by the Department in whatever manner solely for the purpose of monitoring this approval.

Excerpts from approval letter dated November 9, 2007 to RHP

The Department's decision to approve the Certificate of Public Advantage is made subject to the following conditions pursuant to Section 312 of Regulation No. 61-31, Health Care Cooperative Agreements:

1. That RHP will provide the Department an annual report which will include, at a minimum, responses to the questions in Regulation No. 61-31, Health Care Cooperative Agreements, Section 502 (B); information which will enable the Department to evaluate each of the conditions listed below; and any additional information the Department feels is necessary to adequately evaluate the compliance of the Certificate of Public Advantage. This annual report is due to the Department no later than one hundred twenty (120) days after the end of each fiscal year after the RHP Certificate of Public Advantage is consummated;
2. That RHP will provide the Department with all new commercial payer contracts or contract modifications; this will include reimbursement terms;
3. That RHP will provide the Department with annual independently audited financial statements;
4. That RHP will provide the Department with annual reports which should contain updated reviews of the performance plan and other quality initiatives to include information of cost savings and investments in quality;
5. That RHP will provide the Department with an annual performance report card presented to the Medical Management Committee;
6. That RHP will provide the Department with any modifications or changes to its operating agreements, any modifications or changes to the Physician Provider Agreement, and any new securities offering memoranda or prospectuses;
7. That RHP will provide, on an annual basis, information on ownership and equity investment. RHP will provide information showing the extent to which individual physicians are owners, and any changes in the ownership structure; and
8. That RHP will pay to the Department an annual monitoring fee to cover the actual cost of audits and monitoring. This fee will be used by the Department in whatever manner solely for the purpose of monitoring this approval.

ATTACHMENT II

**State House Network
2000 Code of Regulations
(unannotated)**

Current through State Register Volume 25, Issue 1, effective January 26, 2001.

[Return](#) to the **Chapter 61** Main Page
[Go](#) to the **Code of Regulations** Main Page
[Full](#) Text Search of the Code of Regulations

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**CHAPTER 61.
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

61-31. Health Care Cooperative Agreements.

CHAPTER 1 PURPOSE, DEFINITIONS, APPLICABILITY

Section 101. Purpose:

These Regulations implement the legislative intent that there be a state regulatory program to permit and encourage cooperative agreements between hospitals, health care purchasers, or other health care providers which would otherwise violate federal or state anti-trust laws when the benefits outweigh disadvantages caused by their potential adverse effects on competition.

This is encouraged because the cost of improved technology and scientific methods contribute significantly to the increasing cost of health care; and cooperative agreements among hospitals, health care purchaser, and other health care providers will foster improvements in the quality of health care for South Carolinians.

Section 102. Definitions:

As used in this regulation:

1) "Affected persons" means a health care provider or purchaser:

a) who provides or purchases the same or similar health care services in the geographic area served or to be served by the applicants for a Certificate of Public Advantage; or

b) who has notified the Department of his interest in applications for Certificates of Public Advantage and has a direct economic interest in the decision. Other than health insurers licensed in South Carolina, persons from other states who would otherwise be considered 'affected persons' are not included unless that state provides for similar involvement of persons from South Carolina in a similar process in that state.

2) "Certificate of Public Advantage" mean the formal approval, including any conditions or modifications, by the Department of a contract, business or financial arrangement, or other activities or practices between two or more health providers, health provider networks, or health care purchasers that might be construed to be violations of state or federal laws.

3) "Cooperative agreement" means an agreement between two health care providers, health provider networks, or health care purchasers or among more than two health care providers, health provider networks, or health care purchasers for the sharing, allocation, or referral of patients or the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic or laboratory facilities, procedures, equipment, or other health care services traditionally offered by health care facilities or other health care providers or the acquisition or merger of assets among or by two or more health providers, health provider networks or health care purchasers, provided the agreement does not involve price-fixing or predatory pricing or illegal tying arrangements.

4) "Department" means the Department of Health and Environmental Control.

5) "Health care provider" means a health care professional licensed, certified, or registered under the laws of this State, an organization licensed pursuant to Section 44-69-30 or Section 44-71-30, or a facility licensed pursuant to Section 44-7-260 or Section 44-89-40 to provide health care services or any other person as defined in Section 44-7-130(15) who provides health services in a freestanding or mobile facility.

6) "Health care purchaser" means a person or organization that purchases health care services on behalf of an identified group of persons, regardless of whether the cost of coverage of services is paid for by the purchaser or by the person receiving coverage or services, including but not limited to:

- a) health insurers as defined by Section 38-71-92;
- b) employee health plans offered by self-insured employers;
- c) group health coverage offered by fraternal organizations, professional associations, or other organizations;
- d) state and federal health care programs; and
- e) state and local public employees health plans.

7) "Health provider networks" means an organization of health care providers which offers health services to a resident of this State. An organization may be a partnership, corporation including an association, a joint stock company, or any other legal entity recognized by the State.

8) "Health service area" means the proposed primary service area of all facilities or entities involved in the cooperative agreement.

9) "Federal or state antitrust laws" means a federal or state law prohibiting monopolies or agreements in restraint of trade, including the Federal Sherman Act and Clayton Act, the Federal Trade Commission Act, and Chapters 3 and 5 of Title 39 of the 1976 Code.

10) "Party" or 'Party to a cooperative agreement' means a person who negotiates or enters into a cooperative agreement.

11) "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a joint stock company, an insurance company, a health maintenance organization, a state, a political subdivision of a state, an instrumentality including a municipal corporation of a state, or any legal entity recognized by the State.

12) "A complete application" means a Questionnaire [page 15 of these Regulations] with all applicable questions answered, and a narrative addressing each point set out in Section 202, and any additional information requested by the Department pursuant to Section 302.

13) "Receipt" means actual receipt of a written document.

Section 103. Applicability

This regulation applies to health care providers, health care networks, and health care purchasers who apply for a Certificate of Public Advantage and to those who receive a Certificate of Public Advantage.

The issuance of a Certificate of Public Advantage is not required in order for health care providers, purchasers or networks, to negotiate and enter into cooperative agreements with other health care providers. Parties to a cooperative agreement may apply to the Department for a Certificate of Public Advantage, should they desire.

CHAPTER 2 APPLICATION

Section 201. Application Submission:

Two copies of the application shall be forwarded to the Department in the format described in Section 202. The application shall be on 8 1/2 × 11 paper, one side only, and three hole punched on the left side.

Section 202. Application:

In answering the following questions, the applicants may refer to specific sections of the executed cooperative agreement in lieu of repeating the required information.

For each response for which confidentiality has been sought pursuant to Section 310, include the following statement:
"Submitted separately under claim of confidentiality."

An application shall consist of:

(a) PART A. Questionnaire.

QUESTIONNAIRE PART A.

Parties To The Cooperative Agreement

Name	Title	Address
------	-------	---------

1.		
2.		
3.		
4.		
5.		

Brief Description of Proposal

Describe Proposed Market Area

Person Responsible For This Application	Title
---	-------

Address

Telephone Number

All parties hereby certify that the information contained in this Application, including all assurances and attachments, are accurate and correct to the best of our knowledge and belief.

Signature _____ Date _____

(b) PART B. Narrative

1. (A) Describe the agreement in detail, including all the parties and each party's responsibilities, obligations and commitments.

(B) State whether the project will change the existing services of a health care provider.

(C) Describe any shared services.

(D) Describe any obligation for future commitments or negotiations.

(E) Describe the nature and scope of the cooperation that is required by each party to the agreement.

(F) Describe in detail any monetary or other consideration passing to a party under the cooperative agreement.

(G) Describe in detail any merger, lease, change of ownership or other change in control of the assets of any party to the cooperative agreement.

2. Provide the total cost of the project and the costs to be incurred by category. Examples include but are not limited to consultants, capital costs, and management costs. Describe what part of the cost is borne by each party.

3. Provide the following ownership disclosure for each party in the agreement.

(A) The name of the party;

(B) Address of each party;

(C) The complete title of the governing body (if any);

(D) The name, title and address of the presiding officer of the governing body;

(E) The name and mailing address of all persons and/or entities having 5% or more ownership interest or owner's equity of any of the parties to include a schedule of percent and type ownership of each;

(F) A list of all officers of each party;

(G) A copy of any agreement, contract, option, understanding, intent or other arrangement that will effect a change in any of the information provided in subparagraphs (A) through (F) above. If such an agreement exists, provide similar information for the party after the terms of the arrangement are carried out; and

(H) If any of the licensees of the cooperative agreement are a subsidiary corporation, provide a diagram of the licensee's relationship to the parent corporation and list the name and address of the parent corporation.

4. Demonstrate and document that the likely benefits accruing from the cooperative agreement outweigh the likely disadvantages. At a minimum, include the economic, administrative, and patient impact of the agreement. Describe how the

cooperative agreement will foster cost containment, eliminate duplicate services or otherwise positively impact the health care system. Describe how the cooperative agreement will reduce competition, reduce patient choice, or otherwise negatively impact the health care system.

5. Discuss alternatives that have been considered and the advantage and disadvantages of each alternative.
6. Discuss any improvements in access and any problems patients may experience, such as costs, availability, or accessibility, upon initiation of the proposed cooperative agreement.
7. Identify any costs associated with implementation of the cooperative agreement and provide documentation of the availability of the necessary funds.
8. Describe the current service area of each party to the cooperative agreement and describe the proposed service area upon initiation of the cooperative agreement.
9. Describe the current market share of each party to the cooperative agreement and describe the proposed market share upon initiation of the cooperative agreement.
10. Provide a current annual budget for each party involved in the cooperative agreement and a three year projected budget for all entities after the initiation of the cooperative agreement. The budgets must be in sufficient detail so as to determine the fiscal impact of this cooperative agreement on each party. The budgets must be prepared by a Certified Public Accountant (CPA) and all assumptions used must be shown.
11. Document that the proposed agreement is economically feasible both immediately and long term. Describe the impact that the cooperative agreement will have on costs per unit of service.
12. Describe how the agreement enhances or restricts health care services to Medicaid, indigent or charity patients.
13. Provide the name, address and telephone number of the individual who should be contacted for monitoring the implementation of this agreement.
14. Provide a timetable for implementing all components of the cooperative agreement.
15. Provide any additional information that would assist the Department in evaluating this cooperative agreement.

(c) Part C. Programmatic Documents

1. An executed copy of the negotiated cooperative agreement between all parties; or
2. A written copy of the negotiated cooperative agreement and documentation that the proposed subject has been approved by the governing body of each party.

(d) Part D. Assurances

The parties must furnish written assurance of each of the following:

1. that the parties will submit to the Department for approval any changes that occur to the approved cooperative agreement;
2. that the parties will carry out the agreement in accordance with the approval application;
3. that the parties understand that the Department may revoke a Certificate of Public Advantage at any time for reasons outlined in Section 503 of these regulations;

4. that the Department or its authorized representatives at any time during normal hours of operation shall be allowed to make an on-site inspection to determine compliance in accordance with the application for which the Certificate of Public Advantage was issued;
5. that the parties will cooperate with the Department or any investigation regarding compliance with the application for which the Certificate of Public Advantage was issued by providing relevant information in a timely manner, assisting in the collection of data, or satisfying other relevant requests from the Department;
6. that the parties will submit at least every two years, the information required by Section 502 of these regulations;
7. that this cooperative agreement does not involve price fixing, predatory pricing or illegal tying arrangements;
8. that the parties understand that the issuance of a Certificate of Public Advantage does not exempt any of the parties from compliance with the provisions of Regulation 61-15, Certification of Need for Health Facilities and Services.

CHAPTER 3 DISPOSITION OF APPLICATION

Section 301. Submission of Application:

Two copies of the application, and the filing fee set forth in Section 509 shall be submitted to the Bureau of Health Facilities and Services Development, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.

Section 302. Additional Information:

(A) After receipt of an application and the appropriate filing fee, the Department will review the application. The Department may request additional information within thirty days of receipt of the application. The applicant will have thirty days from the date of the request to submit the additional information.

(B) If the additional information submitted in response to the Department's request is incomplete, the Department will have fifteen (15) days in which to request further information. If information necessary to deem the application complete is not submitted within thirty (30) days of the second request, the application will be considered withdrawn. An application that is withdrawn does not preclude the applicant from resubmitting a new application.

(C) An application is complete when the Department notifies the applicant that all necessary information has been received or when no request for additional information has been made within thirty days of receipt of the original application.

Section 303. Notice and Opportunity for Public Hearing:

(A) Upon receipt of an application and the appropriate filing fee the Department shall publish in the State Register a notice of the receipt of the application.

(B) An affected person as defined in these regulations who requests a public hearing must do so in writing within thirty days of notice pursuant to Section 304 that a completed application has been received by the Department.

(C) The Department will determine whether a public hearing will be held; grounds for denying a public hearing include, but are not limited to, a finding that the requestor is not an affected person. When such a public hearing is held, thirty days prior notice of the hearing will be provided to affected persons. The written notification of the hearing shall include the proposed schedule for review, time, date and place of the public hearing. The public hearing shall provide an opportunity for any person to present information relevant to the application.

Section 304. Notification of Affected Persons:

Upon the Department's determination that an application is complete, the Department shall publish in a newspaper having general circulation in the area a public notice that the cooperative agreement application is complete, and when affected persons may request a public hearing. The public notice shall run three consecutive days. Any affected person who has requested in writing to be notified of the determination of the completeness of an application shall be notified in writing by the Department.

Section 305. Review by the S.C. Attorney General:

Upon receipt of a completed application, the Department shall forward a copy of the application to the S. C. Attorney General. After review in accordance with SC Code Section 44-7-550, the Attorney General may advise the Department in writing to approve or deny the application. If no report is received from the Attorney General within thirty days, the Department will consider that as a recommendation to approve the request. If the Attorney General recommends denial of the Certificate of Public Advantage, the Department will consider the reasons therefor. The Attorney General's opinion is advisory and DHEC is responsible for rendering the final decision.

Section 306. Review Time Frames:

The Department must make a decision on the complete application within 60 days of the receipt of a complete application or notification to the applicant that an application is complete, if additional information has been requested, or within sixty days of any public hearing, whichever is later.

Section 307. Department Decision:

On the basis of staff review of the record established by the Department, including but not limited to comments from the Attorney General's office, the application, written and verbal comments by affected persons and other persons concerning the application, data studies, literature and other information available to the Department, the staff of the Department shall make a proposed decision to grant or deny the Certificate of Public Advantage. The proposed decision of the Department shall be in writing and shall set forth the basis for the decision. The Department shall furnish a copy of the decision to applicants and any affected persons who have asked to be notified. The proposed decision becomes the final agency decision within fifteen (15) days after the receipt of a notice of the proposed decision by the applicant or an affected person who has requested to be notified of the decision, unless a contested case hearing is requested pursuant to Chapter 5-Appeals of this regulation. The Department's proposed decision is not final until the completion of the contested case proceedings. The Department shall publish its final decisions in the State Register.

Section 308. Project Changes During Review Period:

The Department will review any amendments submitted during the review process and may notify the applicant that the amendments constitute a new application, and that the requirements of Section 301, 302, and 303 of this regulation must be complied with. All applicable times shall be counted as though the amendment were a new application.

Section 309. Validity of Certificate of Public Advantage:

The Certificate of Public Advantage, if issued, is only valid for the project described in the application including parties involved, services to be offered, mergers or consolidations approved, or other factors as set forth in the application, except as it may be modified in accordance with these regulations. Implementation of a project or undertaking a project that is not in accordance with the Certificate of Public Advantage application or conditions subsequently agreed to by the applicant and the Department may be grounds for revocation of the Certificate of Public Advantage.

Section 310. Proprietary Information:

Information obtained by the Department from the parties requesting a Certificate of Public Advantage shall be available to the public in accordance with the Freedom of Information Act unless the Department determines that the information is protected from disclosure. The Department will make this determination if an applicant submits the information sought to be protected separately, clearly marked as "Confidential", and submits justification that the information is entitled to protection from disclosure under one or more of the grounds therefore in the Freedom of Information Act. Such grounds include but are not limited to:

- 1) Trade secrets including feasibility planning, marketing studies, and evaluations and other materials which contain references to potential customers, competitive information, or evaluations;
- 2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy;
- 3) Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property; or
- 4) Correspondence or work products or any other material that would violate attorney-client relationships.

Section 311. Administrative and Judicial Review:

Upon receipt of the advice of the Attorney General or at the end of the review period outlined in Section 306 of these regulations, the Department shall issue a staff decision approving or denying the application for a Certificate of Public Advantage. The Department's staff decision is final fifteen days after receipt by the applicant unless an administrative appeal is commenced in accordance with applicable regulations. The applicant or affected party is entitled to administrative and judicial review in accordance with the State's Administrative Procedures Act.

Section 312. Conditional Approval:

The Department may establish conditions for approval that are reasonably necessary to ensure that the cooperative agreement and the activities engaged under it are consistent with these regulations and its purpose to promote cooperation and limit health care costs; protect against abuse of private economic power; improve access to care; improve efficiencies in the delivery of care, including improving economics of scale in the delivery of services; reduce or eliminate unnecessary duplication of services or technology; and to ensure that the activity is appropriately supervised and regulated. Such conditions shall be stated in the Certificate of Public Advantage and shall be fully enforceable.

CHAPTER 4 CRITERIA FOR REVIEW

Section 401. Issuance of a Certificate of Public Advantage:

The Department shall issue a Certificate of Public Advantage for a cooperative agreement if it determines that the applicant has demonstrated that the likely benefits resulting from the agreement outweigh the likely disadvantages from the agreement; and the reduction in competition likely to result from the agreement is reasonably necessary to obtain the benefits likely to result.

Section 402. Evaluation of Benefits and Disadvantages:

1. In evaluating the benefits likely to result from the cooperative agreement the Department shall consider, but is not limited to:
 - a) enhancement of the quality of health and health related care provided to South Carolina citizens;
 - b) preservation of health care providers close to communities traditionally served by those providers;
 - c) gains in the cost-efficiency of the services offered by health care providers or purchasers involved;
 - d) improvements in the use of health care provider resources and equipment;
 - e) avoidance or elimination or reduction of duplication of health care resources;
 - f) improvements in access to health care for citizens in the community;
 - g) support of the agreement by purchasers and payers in the health service area;

- h) the extent of financial risk-sharing by the parties as a result of the agreement;
 - i) the provision or enhancement of health care services to Medicaid, indigent, or charity care patients by the parties to the agreement.
2. In evaluating the disadvantages likely to result from the agreement, the Department shall consider but is not limited to:
- a) the likely adverse impact, if any, on the ability of the health care purchasers to negotiate optimal payment and service arrangements with the health care providers or health provider networks;
 - b) the extent of any reduction in competition among health care providers, purchasers, or other persons furnishing goods or services to or in competition with health care providers or purchasers that is likely to result directly or indirectly from the health care cooperative agreement;
 - c) the likely adverse impact, if any, on patients in the quality, availability, and price of health care services;
 - d) the extent to which the agreement may increase the costs of prices of health care at a hospital or other health care provider which is a party to the agreement;
 - e) the extent to which services to Medicaid, indigent, or charity care patients are adversely impacted by the agreement.

Section 403. Evaluation of Impact of Reduction of Completion:

In evaluating whether the reduction in competition is necessary to obtain the likely benefits, the Department shall consider, but is not limited to:

- 1) The availability of arrangements that:
 - a) are less restrictive to competition and achieve the same benefits;
 - b) offer a more favorable balance of benefits over disadvantages attributable to a reduction in competition likely to result from the agreement;
- 2) The ease with which health care providers or health care purchasers may obtain contracts with other health plans;
- 3) The difficulty in establishing new competing health plans in the relevant geographic market, including the ability to offer services requiring a certificate of need or purchasing these services from another health care provider or health provider network; and
- 4) The sufficiency of the number or type of providers under contract with the health plan available to meet the needs of plan enrollees.

Additional Considerations:

The Department may consider other information or factors relevant to the purposes of the Health Care Cooperation Act and this regulation. The information or factors so considered shall be specifically stated in the staff decision. Should the Department consider other information or factors that are not published in these regulations, the Department will notify the applicant as soon as is reasonable practical and will provide them an opportunity to respond.

CHAPTER 5 MONITORING

Section 501. Monitoring:

The Department shall actively monitor and regulate agreements approved under this regulation. The Department may request information, conduct inspections, or conduct audits whenever necessary to ensure that the agreements remain in compliance with the conditions of approval and the approved application. The same rules apply to information acquired by the Department through information received, inspections conducted or audits conducted as in Section 310 of these regulations. The Department shall provide the applicant at least ten day notice of a compliance audit. The Department shall afford the applicant at least ten days to respond to any complaint, question or problem identified by the Department.

Section 502. Activities Report:

(A) During the time the Certificate of Public Advantage is in effect, a report on the activities pursuant to the cooperative agreement must be filed by the parties to the cooperative agreement with the Department at least every two years. Based on this report the Department shall determine whether the cooperative agreement continues to comply with the terms of the Certificate of Public Advantage.

(B) The report shall contain, but not be limited to the following:

1. a detailed description of the implementation of the approved application, contract or other agreement between parties;
2. a detailed description of any changes, modifications, deviations, amendments, or other differences from the approved application;
3. an assessment of the success or failure of the agreement to accomplish the goals, benefits, or other results expected from the approved application. Provide any supporting documentation on which these conclusions are based; and
4. any additional information the parties feel will assist the Department in order to make the assessment required in this Section.

Section 503. Revocation of Certificate of Public Advantage:

The Department may revoke a certificate upon a finding that:

- (A) the parties to the agreement are not complying with its terms or the conditions of approval as stated in the Certificate of Public Advantage, or the agreement is not in substantial compliance with the terms of the application or conditions of approval; or
- (B) the likely benefits resulting from the certified agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement; or
- (C) the Department's certification was obtained as a result of intentional material misrepresentation to the Department or as the result of coercion, threats, or intimidation toward any party to the cooperative agreement; or
- (D) failure to pay the annual monitoring fee.

Section 504. Administrative and Judicial Review:

A decision by the department to revoke a Certificate of Public Advantage is subject to administrative and judicial review in accordance with the State's Administrative Procedures Act.

Section 505. Civil or Criminal Enforcement:

Nothing in this regulation limits the authority of the Attorney General to initiate civil enforcement action or criminal prosecution upon the determination that health care providers, health providers networks, or health care purchasers have exceeded the scope of the Certificate of Public Advantage approved by the Department.

Section 506. Termination of Agreements:

A party to a cooperative agreement who terminates the agreement shall notify the Department within fifteen days of the termination. If all parties terminate their participation in the cooperative agreement, the Department shall revoke the Certificate of Public Advantage for the agreement.

Section 507. Certificate of Need Requirement:

Nothing in this Regulation exempts health care providers or purchasers from compliance with the provisions of the S. C. Certification of Need Program.

Section 508. Changes After Receipt of a Certificate of Public Advantage:

If an applicant amends, alters, or otherwise changes the agreement after receipt of a Certificate of Public Advantage, the Department will decide whether or not the amendment is substantial and thereby requires another review. A change in the application will be considered substantial if the Department believes that the change materially changes the reasons for approval, might materially impact the benefits or disadvantages to the community to be served, or will change the service area of the original application. The addition or deletion of a party to the agreement does not necessarily constitute a substantial change unless the Department believes that the above-mentioned criteria will occur.

Section 509. Fees:

(A) Filing Fee: A non-refundable filing fee shall accompany each application for a Certificate of Public Advantage. The filing fee shall be \$3,000 per party to the cooperative agreement up to a maximum of \$15,000 per application. The filing fee must be received with the application in order for the Department to accept the application and begin processing the application.

(B) Monitoring Fee: An annual monitoring fee shall be assessed to each approved application for which a Certificate of Public Advantage is in effect. The annual monitoring fee shall be \$5,000 for each Certificate which has five or fewer parties and \$7,000 for each Certificate that involves more than five parties. Failure to pay this fee will result in revocation of the Certificate of Public Advantage.

State House Network-LPITS@http://www.scstatehouse.net

ATTACHMENT III - PROPOSAL EVALUATION WORKSHEET - PALMETTO HEALTH (PH)

AGENCY: South Carolina Department of Health and Environmental Control

YEAR(S) COVERED BY PROPOSAL: Maximum of Five-Years

PROPOSING FIRM: _____

EVALUATOR: _____

DATE: _____

Page No.	Responsive RFP Requirement	Evaluator's Comments	Yes	No
	Title Page			
	Table of Contents			
	Letter of Transmittal:			
	1.			
	2.			
	a.			
	b.			
	c.			
	d.			
	e.			
	3.			
	4.			
	5.			
	6.			
	7.			
	8.			
	9.			
	Profile of the Offeror:			
	1.			
	2.			
	3.			
	Mandatory Criteria:			
	1.			
	2.			
	3.			
	4.			
	5.			
	6.			
	7.			
	8.			
	Offeror's Approach:			
	1.			
	a.			
	b.			
	2.			
	3.			
	Compensation:			
	Offeror's Qualifications:			
	1.			
	2.			
	3.			
	4.			
	5			

	Technical Factors - Technical:			
	1.			
	2.			
	3.			
	4.			
	5.			
	6.			
	7.			

EVALUATOR'S CONCLUSION

PRICE QUOTED:

ATTACHMENT III - PROPOSAL EVALUATION WORKSHEET – REGIONAL HEALTH PLUS

AGENCY: South Carolina Department of Health and Environmental Control

YEAR(S) COVERED BY PROPOSAL: Maximum of Five-Years

PROPOSING FIRM: _____

EVALUATOR: _____

DATE: _____

Page No.	Responsive RFP Requirement	Evaluator's Comments	Yes	No
	Title Page			
	Table of Contents			
	Letter of Transmittal:			
	1.			
	2.			
	a.			
	b.			
	c.			
	d.			
	e.			
	3.			
	4.			
	5.			
	6.			
	7.			
	8.			
	9.			
	Profile of the Offeror:			
	1.			
	2.			
	3.			
	Mandatory Criteria:			
	1.			
	2.			
	3.			
	4.			
	5.			
	6.			
	7.			
	8.			
	Offeror's Approach:			
	1.			
	a.			
	b.			
	2.			
	3.			
	Compensation:			
	Offeror's Qualifications:			
	1.			
	2.			
	3.			
	4.			
	5			

	Technical Factors - Technical:			
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EVALUATOR'S CONCLUSION

PRICE QUOTED:

ATTACHMENT IV - INDEPENDENCE STATEMENT

ANNUAL STATEMENT OF INDEPENDENCE

EMPLOYEE NAME/FIRM: _____

(Print Name and Firm)

Generally accepted government auditing standards for governmental organizations, programs, activities, and functions require that an auditor be independent from those he audits. The second general standard for government auditing is: "In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, should be free from personal and external impairments to independence, should be organizationally independent, and should maintain an independent attitude and appearance." See paragraphs 3.03 through 3.32 from Government Auditing Standards, 2003 Revision.

Indicate in the space provided below if there are presently any personal, external or organizational impairments to your independence regarding Palmetto Health and Regional HealthPlus, DHEC, and the State Auditors Office. **If such impairments concern relatives or personal friends working within an audit client, state their name, relationship, client, job position and area of responsibility. If such impairments are financial, please list the client(s) and complete details of all investments and financial transactions.**

I have read the attached excerpts from the Yellow Book. Except as noted above, there are no impairments to my independence regarding Palmetto Health and Regional HealthPlus, DHEC, and the State Auditors Office. I UNDERSTAND THAT IF I BECOME AWARE OF CIRCUMSTANCES AFFECTING MY INDEPENDENCE OR APPEARANCE OF INDEPENDENCE WITH REGARD TO ANY OF THE VENDORS, I WILL NOTIFY DHEC IN WRITING IMMEDIATELY.

SIGNATURE

DATE

POSITION

ATTACHMENT V - CONFIDENTIALITY STATEMENT

Confidentiality Statement

During the course of our audits we are privileged to examine documents and records, which are not available to the general public. The penalties for violating the confidentiality of certain documents are severe.

Attached is an excerpt from the 2003-04 Appropriations Act, and the Code of Laws. Each of you is cautioned to remember that any confidential information gained in the course of your work should never be discussed except on the job and only then on a need-to-know basis.

You are to read the excerpt, sign and date the statement at the bottom of this document and return the signed statement as part of your proposal - **only the signed statement need be returned.**

EXCERPT

SECTION 11-7-35. Access to records and facilities of state and private agencies receiving appropriated state monies; confidentiality.

In order to carry out his duties, the State Auditor and his assistants or designees must have access to all records and facilities of every state agency during normal operating hours. The State Auditor and his assistants or designees must have access to all relevant records and facilities of any private organization receiving appropriated state monies, relating to the management and expenditures of these state monies, during the organization's normal operating hours. In the performance of his official duties, the State Auditor and his assistants or designees are subject to the statutory provisions and penalties regarding the confidentiality of records of the respective agency or organization under review. All audit working papers and memoranda of the State Auditor, with the exception of final audit reports, are confidential and not subject to public disclosure.

STATEMENT

I have read the confidentiality information and excerpt above concerning the obligation to maintain secrecy of information and acknowledge that I am bound by them.

NAME: _____

TITLE: _____

AGENCY/FIRM: _____

SIGNATURE: _____

DATE: _____

ATTACHMENT VI



DHEC Confidentiality Agreement

I understand that the South Carolina Department of Health and Environmental Control (DHEC) has a legal and ethical responsibility to maintain confidentiality of information as to personal facts and circumstances of DHEC employees, clients, or other citizens given or made available to DHEC in administration of the agency's programs and services.

DHEC's Confidentiality Policy states that Information about personal facts and circumstances of DHEC employees, clients and other citizens will be kept confidential and will not be disclosed without the individual's written authorization, except as required by law or as required to perform agency responsibilities. Protected Health Information that identifies an individual generally cannot be released unless properly authorized by the client or his/her legal representative, or pursuant to a specific exception under the Health Insurance Portability and Accountability Act (45 CFR Parts 160 and 164). The Family Privacy Protection Act and other state and federal laws may place additional limitations on disclosure of personal information.

Information that is made available to the public under the Freedom of Information Act must be disclosed in accordance with State law. However, the Freedom of Information Act protects information of a personal nature such that public disclosure would constitute an unreasonable invasion of privacy. The types of information that generally must be kept confidential include, but are not limited to: protected personal information of job applicants, DHEC employees, or members of the public, such as names, social security numbers, addresses, telephone numbers, financial status and information, account or identification numbers issued by government agencies or private financial institutions, confidential business information, vital records information, social security numbers, and health information that identifies individuals.

I understand that during the course of my employment, volunteer services, or contract performance with DHEC, I may see or hear confidential information and/or protected health information.

By signing this agreement, I understand and agree that I will not disclose confidential information or protected health information unless the disclosure complies with DHEC policies and is required to perform my responsibilities. I will not access or view any information other than what is required to do my job. If I have any questions about whether I need access to certain information, or whether certain information should be disclosed, I will immediately ask my supervisor for clarification. I will immediately report any unauthorized disclosure of protected health information or other confidential information as required by DHEC Policy, or as required by terms in any contract or agreement with DHEC to which I am a party.

I will not discuss any confidential information or protected health information obtained in the course of my relationship with DHEC with any person or in any location outside of my area of responsibility in DHEC, except as otherwise required or permitted by law. I will not make any unauthorized copy or disclosure of this information, or remove or transfer this information to any unauthorized location.

I agree that my obligations under this Agreement regarding confidential and protected health information will continue after termination of my employment/volunteer assignment/contract affiliation with DHEC.

I understand that violation of this Agreement may result in termination of my volunteer, contractual and/or work relationship with DHEC and may be grounds for disciplinary action, fines, penalties, imprisonment or civil suit to be brought against me.

I have read the above Agreement and agree to comply with all its terms.

Signature: _____ Date: _____

Witness: _____ Date: _____

Work Location: _____

DHEC 321 Rev 3/2007

ATTACHMENT VII

BUSINESS ASSOCIATE AGREEMENT

BETWEEN

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AND

Purpose:

The South Carolina Department of Health and Environmental Control (hereafter referred to as "Covered Entity") and _____ (hereafter referred to as "Business Associate") desire to enter into this Business Associate Agreement (hereafter, "BA Agreement" or "the Agreement") for the purpose of protecting the privacy and security of clients' health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Standards for Privacy of Individually Identifiable Health Information, 45 CFR Part 160 and Part 164, Subparts A and E (hereafter referred to as "the Privacy Rule"), and the HIPAA Security Standards for the Protection of Electronic Protected Health Information, 45 CFR Part 160 and Part 164, Subparts A and C (hereafter referred to as "the Security Standards.")

II. Definitions (Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule or the Security Standards.)

- a. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- b. Protected Health Information. "Protected Health Information" (hereafter referred to as PHI) shall have the same definition contained in 45 CFR § 160.103. For purposes of this Agreement, PHI is limited to the information created or received by Business Associate from or on behalf of Covered Entity. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.
- c. Electronic Protected Health Information. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR § 164.103.
- d. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- e. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services or his designee.

III. Business Associate Agrees as follows:

- a. To Adhere to the Covered Entity's policies and procedures with regard to the use and disclosure of PHI created or received by the Business Associate from or on behalf of the Covered Entity, for so long as this BA Agreement is in effect.
- b. To Comply with the Confidentiality provision contained in Contract # _____ and any Confidentiality Agreement signed by the Business Associate pursuant to that Contract for so long as this BA Agreement remains in effect.
- c. Not to use or disclose PHI other than as permitted or required by this Agreement or as Required By Law.
- d. To use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. The Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any ePHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Standards.

- e. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, pursuant to 45 CFR § 164.530(f).
- f. To report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which Business Associate becomes aware.
- g. To ensure that any agent, including a subcontractor, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information and that any agent or subcontractor to whom it provides ePHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, agrees to implement reasonable and appropriate safeguards to protect such ePHI.
- h. To provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements of 45 CFR § 164.524 if the Business Associate has PHI in a designated record set.
- i. To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity if the business associate has PHI in a designated record set. Business Associate shall not amend PHI received from the Covered Entity or created and/or provided to the Business Associate on behalf of the Covered Entity unless the amendment is directed by or consented to by the Covered Entity. The Business Associate shall provide a copy of the amended PHI to the Covered Entity.
- j. To make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- k. To document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- l. To provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section III.k of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- m. If requested by the Covered Entity, to provide a copy of the Covered Entity's Notice of Privacy Practices to the client at the time of first contact, and maintain documentation of the client's receipt of the Notice.
- n. To contact the Covered Entity's Privacy Officer at (803) 898-3318 at any time clarification or guidance is needed regarding compliance with the terms of this Agreement.

IV. Covered Entity Agrees as follows:

- a. To provide the Business Associate with a copy of its policies and procedures implementing the Privacy Rule, including the Notice of Privacy Practices.
- b. To notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c. To notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- d. To notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- e. Not to request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

V. Permitted Uses and Disclosures by Business Associate

a. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Contract # _____, or as otherwise provided by law, provided that such use or disclosure would not violate the Privacy Rule or the Security Standards if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity, and provided that such disclosures are documented pursuant to Sections III(k) and (l) of this Agreement.

b. Specific Use and Disclosure Provisions

1. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
2. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.

Business Associate will notify the Covered Entity of any breach of confidentiality or security by a person to whom the Business Associate has disclosed PHI pursuant to this Section, and will mitigate and/or assist the person and the Covered Entity in mitigating any harmful effects resulting from the breach of information.

3. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
4. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

VI. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of _____, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and Contract # _____ if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 2. Immediately terminate this Agreement and Contract # _____ if Business Associate has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. If the return or destruction of PHI held by the Business Associate is not permissible pursuant to South Carolina law, the Business Associate will extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. Indemnification (the following does not apply to other South Carolina agencies or political subdivisions)

Business Associate agrees to indemnify and hold harmless Covered Entity from any claims, demand, suit, loss, liability, or administrative penalties that the Covered Entity may sustain as a result of the Business Associate's breach of this Agreement, including any breach of confidentiality by a person to whom the Business Associate has disclosed information pursuant to this Agreement; provided, however, that the Business Associate shall not hold the Covered Entity harmless from any claims, demands or causes of action arising or resulting directly or indirectly from negligence of the Covered Entity, its officers, agents, representatives or employees, or any person or entity not subject to the Business Associate's supervision or control. This indemnification shall include reasonable expenses including attorney's fees incurred by defending such claims and damages incurred by reason of the Business Associate's failure to comply with applicable laws and regulations or for damages caused by the Business Associate, its employees and/or agents, including subcontractors. As a condition precedent to asserting a right of indemnity, the Covered Entity shall provide timely written notice to the Business Associate of the assertion of the claim to which the right of indemnification is claimed to exist.

VIII. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Standards means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Standards and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section VI.c of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Standards.

AS TO DHEC

BY: _____
Clarissa G. Clark, CPPB, Procurement Manager
Division of Procurement Services
DHEC – Bureau of Business Management

DATE: _____

AS TO THE CONTRACTING PARTY

BY: _____
(NAME)
Its: _____
(TITLE)

DATE: _____

MAILING ADDRESS: _____
